



Tax News

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Innocent Joint Filer

Under federal and state income tax laws, when two people file a joint tax return, both individuals are treated as agreeing to joint filing and liabilities. See California Revenue and Taxation Code (R&TC) Section 19006(b) and Internal Revenue Code (IRC) Section 6013(d)(3). This means that we or the Internal Revenue Service (IRS) can collect the entire amount of tax due from either spouse or registered domestic partner (RDP) who signed the joint return. However, the R&TC provides that a taxpayer may receive tax relief if that taxpayer meets the requirements for innocent spouse relief. Generally, R&TC Section 18533 conforms to IRC Section 6015, the federal innocent spouse relief statute.

California innocent spouse relief laws were first introduced in the 1970s. Throughout the years, these laws have been amended. In 1999, California conformed to part of the IRS Restructuring and Reform Act of 1998, and enacted the "California Taxpayers' Bill of Rights Act of 1999." This added provisions to R&TC Section 18533 to expand the existing innocent spouse relief.

More amendments were made to the innocent spouse provisions in 2004, which provided that individuals granted innocent spouse relief from IRS, would also be entitled to relief under California laws, unless the other taxpayer who signed the joint return showed that one of the exceptions to the granting of conforming relief applied. This provision ended January 1, 2009. SB 1065 introduced February 17, 2010, seeks to have this provision reinstated.

To request innocent spouse for your client, complete and submit the application from form [FTB 705](#), Innocent Joint Filer, and provide a supporting statement explaining why your client qualifies for relief. To print the form and instructions, go to ftb.ca.gov and search for **705**.

You may contact the Innocent Joint Filer staff at 916.845.7072.

Miscellaneous Statutes of Limitations on Deficiency Assessments and Claims for Refund/Credit

This is the final article on Statutes of Limitation (SOLs) relating to California tax law. This month's article addresses miscellaneous SOLs for deficiency assessments and for claims for refund or credit.

- 1. Six-year SOL for assessment if taxpayer omits 25 percent of gross income.**

If a taxpayer omits 25 percent of the gross income that should properly be reported on the return, we may issue a proposed assessment within six years of the date the return was filed. (R&TC Section 19058)

2. Eight-year SOL for assessment for an "Abusive Tax Avoidance Transaction."

We may issue a proposed assessment within eight years after the return was filed if the assessment is related to any plan or arrangement whose principal purpose is tax avoidance. This includes both listed and non-listed transactions. (R&TC Section 19755)

3. SOLs relating to pass-through entities.

The SOL to issue a deficiency assessment relating to pass-through income from a partnership, a limited liability company, and an S corporation is determined by the SOL for proposing an assessment to the ultimate recipient of the income, for example, by the SOL for the partner, member, and shareholder, respectively. However, the SOL to assess the 1.5 percent tax on an S corporation is determined by the SOL for that S corporation.

4. Deficiency assessments in cases of fraud or failure to file return.

The SOL on deficiency assessments does not begin to run until a valid return is filed. We may issue a proposed deficiency assessment at any time if a taxpayer has not filed a return or has filed a false or fraudulent return intending to evade tax. (R&TC Section 19087)

5. Deficiency SOL not applicable to the LLC fee.

The SOL applicable to deficiency assessments only applies to deficiency amounts. We may assess the LLC fee (based on gross income) at any time because the fee is not a tax.

6. Refund based on Other State Tax Credit.

A taxpayer may file a claim for refund or credit based on payment of taxes to another state within a year of the date the taxpayer pays the tax to the other state. This SOL applies to taxes paid to another state beginning January 1, 2009. (R&TC Section 19311.5)

Third Quarter Estimate Tax Payment is *What?*

New for the 2010 tax year, the third quarter estimated tax payment requirement is zero percent (potential exceptions include taxpayers who underpaid in the first or second quarter or taxpayers who annualize their income). So, now is a perfect time for you to review your clients' 2010 estimated tax payments. Use Form 540ES, Estimated Tax for Individuals, or Form 100ES, Estimated Tax for Corporations, to help you determine if your clients' tax liability is on track, overpaid, or underpaid. If you find that your clients' tax liability is underpaid, you can minimize their underpayment of estimated tax penalty

by paying in the third quarter. You might also want to consider splitting the 30 percent fourth quarter requirement between the third and fourth installments.

You can check your individual clients estimated tax payments we received at ftb.ca.gov and search for [MyFTB account](#). For your corporate clients, you can call our Tax Practitioner Hotline 916.845.7057. The best time to call the Hotline is between 8-9 a.m.

Register Now: Free California Source Income Withholding Webinar September 14, 2010

Dates and Times: Tuesday, September 14, 2010, 10 a.m. (PDT), 35 minutes

Topic: Independent Contractor Withholding

We designed this webinar for those who must withhold on California source income payments to resident and nonresident independent contractors. We will take a look at:

- The basics of resident and nonresident independent contractor withholding, including backup withholding.
- A summary of the three phases of withholding and what to do before payment (FTB Forms 587, 588, 589, 590), at the time of payment, and after payment of California source income to independent contractors (FTB Forms 592, 592-V, 592-B).
- How we are preparing for process changes that will occur when we implement our new, automated withholding system in late 2010.
- Withholding resources and contact information.

Registration: Space is limited. To reserve your space, [Register here](#) or go to ftb.ca.gov and search for **webinars**.

2010 State Income Tax Rate Schedules Adjusted

We released the 2010 California state tax brackets. The brackets are indexed each year to reflect changes in the California Consumer Price Index (CPI) from June through July of the past year. The personal income tax rate schedules, return filing thresholds, standard deduction amounts, itemized deduction limitation amounts, personal and dependent exemption credits, credit amounts, and alternative minimum tax exemption amounts were adjusted based on a 0.9 percent inflation rate for the period from July 2009 through June 2010. Last year, California had a deflation rate that measured 1.5 percent.

Below are some of the changes:

	2010 Amounts	2009 Amounts
Standard deduction for single or "married filing separate" taxpayers	\$3,670	\$3,637
Standard deduction for joint, surviving spouse, or head of household taxpayers	\$7,340	\$7,274
Personal and dependent exemption credit amount for single, separate, and head of household taxpayers	\$99	\$98
Personal exemption credit amount for joint filers or surviving spouses	\$198	\$196
Renter's Credit is available for single filers with adjusted gross incomes	\$34,722 or less	\$34,412 or less
Renter's Credit is available for joint filers with adjusted gross incomes	\$69,443 or less	\$68,824 or less

A new tax law sets the dependent exemption credit for tax years 2009 and 2010 to the indexed personal exemption credit.

The minimum filing requirement thresholds are also adjusted each year to include the added senior exemption and the dependent exemption credits. For example, most single people under 65 years old with no dependents would not need to file a state return until they have adjusted gross income of \$11,803 or more compared to last year's threshold of \$11,698 or more.

Other tax credits affected by indexing include the Joint Custody Head of Household

Credit, Dependent Parent Credit, and Qualified Senior Head of Household Credit.

More information about the [2010 tax rates and exemptions](#) and other tax matters is available at ftb.ca.gov.

Ask the Advocate



Steve Sims, EA
Taxpayers' Rights Advocate

New Team Member

I would like to introduce my newest team member:

Brenda Voet, Technical Assistant provides technical support on all issues relating to the Advocate's office. She works on special projects, department teams, performs R&TC research, and provides support on systemic issues and tax practitioner issues. She is also a presenter for the education and outreach effort. She is an expert in nonresident taxation, residency determinations, personal income taxation, partnerships, s-corporations, and limited liability companies.

Follow our FTB Advocate on Twitter at twitter.com/FTBAdvocate.

Event Calendar

September Education and Outreach Events			
Date	Event Association	Subject Matter	Location
1 & 2	IRS National Tax Forum	Tax Update	San Diego
11	SF Sunset Moon Committee	Festival	San Francisco
12	San Mateo Autumn Moon Committee	Festival	San Francisco
16	IRS - Bay Area SB Forum	Small Business	San Francisco

20	IRS Town Hall Meeting	Latest FTB Developments	San Jose
22	IRS Town Hall Meeting	Latest FTB Developments	Fresno
23	IRS Town Hall Meeting	Latest FTB Developments	Sacramento
23	CSEA Event	Tour and Presentation	Sacramento
28	Board of Equalization	Small Business	Placer County
30	Board of Equalization	Forms of Ownership	San Diego

October Education and Outreach Events			
Date	Event Association	Subject Matter	Location
6	CSTC San Francisco	Tax Update	San Mateo
19	Inland Empire CSEA Hilton Hotel 285 E. Hospitality Ln. Register: kim@retaxhelp.com or 909.944.0446	Hot Tax Topics	San Bernardino
20	CSEA Palomar Ch	Tax Update	Escondido
27	CalCPA Liaison Meeting	Tax Update	Sacramento
27	EZ Conference	Intro of Enterprise zone	San Bernardino
28	EZ Conference	Franchise Tax Board Updates	San Bernardino
29	EZ Conference	Question & Answer Session	San Bernardino

November Education and Outreach Events			
Date	Event Association	Subject Matter	Location
10	Coachella Valley Enterprise Zone	Enterprise Zone	Indio
11	CSEA	Golden Gate Chapter Presentation	San Francisco
17	San Diego Tax & Acctg Institute	Tax Update	San Diego

Inside FTB

The Personal Income Tax Audit is Done... Now What?

Upon completion of the audit, we mail a Notice of Proposed Assessment (NPA) to the taxpayers when there is a change in the amount of tax due.

When taxpayers agree with the auditor's finding, they should pay the added tax, penalties, and interest shown on the NPA. They can pay on line at ftb.ca.gov. They can use our [WebPay](#) service, enter into an [installment agreement](#), or pay by [credit card](#).

If taxpayers do not agree with the audit findings, they can file by the "*protest by*" date shown on the front of the NPA. Taxpayers generally have 60 days to protest. The protest must be in writing, clearly state the issues, and the reasons for protest.

NEW - Fax protest letter to: 916.364.2754

or

Mail protest letter to:

PROTEST CONTROL DESK MS F340
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

We provide details of the information taxpayers should include in the protest letter on form [FTB 7275](#), Personal Income Tax Notice of Proposed Assessment Information, included with the NPA, and also available at ftb.ca.gov.

The protest process provides taxpayers the forum to present facts, information, documentation, and authority to support their position of why the NPA is wrong. It is intended to be an informal process. The hearing officer, or attorney, assigned to the protest case is responsible for making a determination of the correct amount of tax based upon the facts and application of the law.

We will grant an informal oral hearing if the taxpayers request in the protest letter. Taxpayers or their authorized representatives may attend the one-hour hearing which is generally conducted at one of our [public service offices](#). Go to ftb.ca.gov for locations and hours.

Once we determine the correct amount of tax, we send a Notice of Action (NOA).

If the taxpayers agree with the findings detailed on the NOA, they should pay the balance as shown. Otherwise, they may file an appeal with the State Board of Equalization by the date shown on the NOA.

Fax appeal to: 916.324.2597
Or

Mail or hand-deliver appeal to:

BOARD PROCEEDINGS DIVISION MIC: 81
BOARD OF EQUALIZATION
450 N STREET
PO BOX 942879
SACRAMENTO CA 94279-0081

Taxpayers generally have 30 days to file an appeal. Form [FTB 7277](#), Personal Income Tax Notice of Action Information, is included with the NOA and also available at ftb.ca.gov. It provides complete instructions for filing an appeal to the State Board of Equalization.

For business entities, the protest and appeal filing deadlines and procedures are the same. Go to ftb.ca.gov for more information.

Criminal Corner

Camarillo Businessman Sentenced for State Income Tax Evasion

A Tarzana man pleaded not guilty to five counts of filing fraudulent state income tax returns.

Our special agents arrested Nicholas A. Francisco, 59, of Tarzana, last week. Francisco, the owner of a check cashing business, allegedly failed to report more than \$3.5 million in income on his 2003 through 2007 state income tax returns. Francisco owes the state more than \$735,000 in unpaid tax, interest, and penalties. The cost of the investigation will be added to this amount and sought as restitution. Each tax count carries a maximum sentence of three years in state prison.

This is another prosecution by the Los Angeles County District Attorney's Fraud Interdiction Program. Francisco came to our attention during the investigation of an unrelated criminal case involving a medical doctor who utilized Francisco's check cashing business as part of his medical fraud scheme.

The failure to report income is part of the \$6.5 billion tax gap California faces each year. The tax gap is defined as the difference between tax that is owed and tax that is paid.

Los Angeles County Superior Court Judge Ray G. Jurado presided over the arraignment in Department 30 of the Clara Shortridge Foltz Criminal Justice Center. Los Angeles Deputy District Attorney David Berger of the Los Angeles District Attorney's Health Care Fraud Unit is prosecuting the case. This is a joint investigation between the Los Angeles District Attorney's office and us.

Big Business

Suspension and Revivor 101, Part 2

In [last month's article](#), we discussed how a corporation or LLC becomes suspended or forfeited. In this article, we will discuss the effects of suspensions or forfeiture and the revivor process.

Effects of Suspension and Forfeiture

When a corporation or LLC is suspended or forfeited it loses its powers, rights, and privileges. A suspended or forfeited corporation or LLC cannot:

- Legally transact business.
- Enforce contracts.
- Bring an action or defend itself in court.
- Be granted an extension of time to file.
- File a claim for refund or amended return.
- File or maintain an appeal before the Board of Equalization.
- Begin or continue to protest an assessment.
- Sell, transfer, or exchange real property.
- Keep their exclusive rights to the entity's name.

In addition, corporations may be subject to a \$2,000 penalty while doing business while they are suspended or forfeited. We discuss this penalty, along with the Secretary of State and contract voidability penalties in more detail in next month's article.

Authorized Activities During Suspension or Forfeiture

Corporations or LLCs are limited in what they can legally do while they are suspended or forfeited. They may:

- Apply for revival.
- Pay any balance due.
- File delinquent returns to revive.
- Amend their Articles of Incorporation (corporations) or Article of Organization (LLCs) to change their name
- Apply for exempt status.
- Amend their Articles of Incorporation (corporations) or Article of Organization (LLCs) to perfect their exempt application.

The Revivor Process

The revivor process starts with a phone call to our Revivor Unit at 888.635.0494 to determine what your client needs to do to bring their corporation or LLC into compliance (aka “good standing”).

Mail-In Revivor

After you contact us, we send you or your client:

- Written revivor requirements.
- Application for Certificate of Revivor.
- Information on contract voidability.

It takes approximately six weeks to process the revivor request once we receive the entity's information.

Rush Revivor

If your client cannot wait six weeks and does not meet the requirements for a walk-through revivor, your client can take their paperwork, completed returns, and payment to one of the following district offices:

- Los Angeles.
- Oakland.
- Sacramento.
- San Diego.
- San Francisco.
- Santa Ana.

The entity will receive its revivor certificate in approximately 10 to 14 days.

Walk-through Revivor

A walk-thru revivor is done when your client's entity has to be revived immediately because of escrow closing, litigation or a pending loan or a federal grant. This type of revivor takes one day to complete after you or your client contact us. A walk-through revivor can only be done in one of the district offices listed above.

Important: You **must** call us at 888.635.0494 at least 24 hours in advance to arrange a walk-through revivor. We also highly recommend that your client arrive early in one of our district offices because there are no appointments at the public counter.

Your client must take all of the following to the district office:

- All returns, paperwork, and monies due. The payment must be in **guaranteed** funds such as cashier's check, certified check, money order, or cash. We do not accept corporate checks. If the entity is subject to mandatory Electronic Funds Transfer (EFT) payment requirements they still must pay by guaranteed funds. We will not assess an EFT penalty in this case.
- Copies of the actual escrow, loan, or pending litigation papers, in the entity's name. We will **not** accept a letter from their attorney, CPA, or representative stating this information.
- A **separate** certified payment for the \$100 fee. The fee must also be paid in guaranteed funds.

Next month, we cover the penalties that are associated with suspension and forfeiture.

If the corporation or LLC continues to do business or receives income after it is suspended or forfeited, it is still required to file tax returns (R&TC 23303). In addition, we can assess a penalty on corporations that continue to do business while they are suspended or forfeited. We will discuss this penalty in Part 3 of this series.

In Part 2 of this series, we will discuss the effects of suspension or forfeiture and the how to revive your corporation or LLC.